

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-338
District Docket No. XIV-2014-0160E

IN THE MATTER OF
STEVEN E. SAVAGE
AN ATTORNEY AT LAW

Decision

Decided: February 3, 2015

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The two-count complaint, dated August 4, 2014, charged respondent with the following ethics violations: RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.5(a)(1) and R. 1:21-1 (practicing law while ineligible and while suspended); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and

RPC 8.4(d) (conduct prejudicial to the administration of justice) (count one) and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities) (count two). For the reasons detailed below, we determine to impose a consecutive six-month suspension.

Respondent was admitted to the New Jersey bar in 2003. At the relevant time, he maintained a law office in Newark, New Jersey.

On April 16, 2013, respondent was temporarily suspended for failing to cooperate with an OAE investigation. In re Savage, 213 N.J. 378 (2013). Respondent remains suspended to date.

On October 24, 2013, respondent was suspended for three months for misconduct in two consolidated default matters. In one matter, he failed to cooperate with the OAE by not providing information that the OAE repeatedly requested and twice failing to appear at OAE demand audits. He also permitted an individual not admitted to practice law in New Jersey to be a signatory on his trust account. In the second matter, he did not reply to the ethics investigator's requests for information about a grievance. Although we determined to impose a censure, the Court enhanced the discipline to a three-month suspension, following respondent's failure to appear for an order to show cause issued by the Court. In re Savage, 216 N.J. 406 (2013).

On October 31, 2014, we determined to suspend respondent for six months for misconduct in two more default matters (DRB 14-051 and DRB 14-109). Those consolidated matters are currently pending before the Court. In one of the matters, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with his client, failure to cooperate with the OAE by not appearing at a demand audit, recordkeeping violations, and failure to safeguard client funds. In the other matter, he failed to cooperate with the OAE by not replying to the investigator's requests for information regarding the underlying grievance.

From September 24, 2012 through the present, respondent has been on the Supreme Court's list of ineligible attorneys for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund).

Service of process was proper in this matter. On August 4, 2014, the OAE forwarded a copy of the complaint, by certified and regular mail, to respondent's home address. Although the certified mail was not claimed, the regular mail was not returned.

On September 9, 2014, the OAE sent a "five-day" letter to respondent's home address, via certified and regular mail, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint

would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of a willful violation of RPC 8.1(b). Although the certified mail was not claimed, the regular mail was not returned.

As of the date of the certification of the record, October 28, 2014, respondent had not filed an answer to the complaint.

As stated previously, by order effective September 24, 2012, respondent was placed on the Supreme Court's list of ineligible attorneys, due to nonpayment of the annual attorney assessment to the Fund. Despite such ineligibility, on October 18, 2012, respondent agreed to represent a client, Rosa Mayhue, in connection with a claim for employment discrimination against her former employer. At the time she engaged respondent, Mayhue was not aware that he was ineligible to practice law. On March 15, 2013, respondent filed a complaint in the Superior Court of New Jersey, Essex County, against Mayhue's former employer.

As mentioned before, on April 16, 2013, respondent was temporarily suspended from the practice of law for failure to cooperate with an OAE investigation. Despite the fact that respondent was still representing Mayhue at the time, he did not inform her that he had been suspended from the practice of law.

On June 3, 2013, a miscellaneous matter was docketed against respondent, in the United States District Court for the District of New Jersey (the District Court), based on the Supreme Court's order temporarily suspending him. The case was assigned to the Honorable José L. Linares, U.S.D.J. On the next day, June 4, 2013, Mayhue's former employer, the defendant in the New Jersey Superior Court matter, successfully removed it to the District Court. This employment discrimination case also was assigned to Judge Linares.

On July 10, 2013, Judge Linares issued an order to show cause as to why respondent should not be temporarily suspended from the practice of law in the District Court until further order of the court. Respondent did not notify Mayhue of the order to show cause in federal court. Rather, he continued to represent her in the federal court matter.

On July 19, 2013, respondent filed, in the District Court, a notice of settlement in connection with Mayhue's claim. On July 30, 2013, Mayhue executed a settlement agreement with her former employer, whereby she received \$12,500 in settlement of her claim and agreed to dismiss her lawsuit with prejudice. On August 6, 2013, Judge Linares ordered the dismissal of Mayhue's case with prejudice, thus closing the matter.

On August 20, 2013, Judge Linares held a show cause hearing with respect to respondent's temporary suspension. Respondent neither appeared nor filed an opposition. On August 26, 2013, respondent was temporarily suspended from the practice of law in the District Court.

In January 2014, dissatisfied with the way her case had been handled and stating that she felt "forced to take a small settlement" in her employment discrimination lawsuit, Mayhue filed an ethics grievance against respondent and another attorney. In her grievance, Mayhue stated that she did not learn of respondent's three-month suspension until January 2014, when the OAE so informed her. Mayhue questioned whether respondent's suspension had affected his representation of her interests and whether he had settled the case with her former employer because of his suspension.

By letter dated April 7, 2014, sent to respondent's home address via certified and regular mail, the OAE provided a copy of the Mayhue grievance to respondent and requested that he provide a written reply to the grievance, copies of Mayhue's file and written fee agreement, and evidence of any fee payments from Mayhue. The certified letter was not claimed, the regular mail was not returned to the OAE, and respondent never complied with the OAE's request for information.

By letter dated May 5, 2014, sent to respondent's home address via certified and regular mail, the OAE provided respondent with additional time to reply to the Mayhue grievance. Respondent signed the certified mail receipt. The regular mail was not returned to the OAE. Respondent never complied with the OAE's request for information.

Count one of the complaint charged that respondent's failure to inform his client that he was ineligible to practice law, his subsequent failure to inform her that he had been suspended from the practice of law, his failure to inform her that the federal court was also considering a suspension of his license, and his continued representation of Mayhue, while he was ineligible and then suspended, violated RPC 3.4(c), RPC 5.5(a)(1) and R. 1:21-1, and RPC 8.4(b), (c), and (d).

Count two alleged that respondent's failure to comply with the OAE's requests for information about the Mayhue grievance constituted failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f). Each charge, however, must be supported by sufficient facts to sustain a

finding of unethical conduct. The facts recited in the complaint support only two of the allegations set forth therein.

Specifically, on October 18, 2012, respondent agreed to represent Mayhue in an employment discrimination case against a former employer. He filed a complaint in the Superior Court of New Jersey on March 15, 2013. Because respondent was ineligible to practice law at the time, his representation of Mayhue violated RPC 5.5(a)(1).

On the other hand, based solely on the record before us, respondent's representation of Mayhue, while suspended in state courts, occurred exclusively in the District Court, during a period of time when the District Court still had not imposed reciprocal suspension. The record reflects that, after Mayhue's removal of the case to District Court, it was settled. Judge Linares reviewed and approved the proposed settlement agreement before respondent was suspended from practice in the District Court. Therefore, the only sustainable misconduct charged under count one is respondent's practice of law while ineligible, in connection with the state court proceedings, in violation of RPC 5.5(a)(1).

Also, as alleged in count two of the complaint, respondent failed to comply with the OAE's requests for information regarding the Mayhue grievance, a violation of RPC 8.1(b).

Moreover, respondent has engaged in a pattern of failure to cooperate with disciplinary authorities, as detailed below.

Practicing law while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (during an approximate thirteen-month period of ineligibility for failure to pay the annual attorney assessment to the Fund, attorney handled three client matters; we considered that, at the time, the attorney was changing careers from being an attorney to becoming a youth minister; that he inadvertently failed to pay the assessment; that the services performed in the three client matters were for friends or acquaintances; that he quickly cured the ineligibility upon learning of it; and that he had no prior discipline in his eighteen-year legal career); In the Matter of Stephen William Edwards, DRB 12-319 (January 25, 2013) (attorney represented one client in one matter while ineligible for failure to pay the annual assessment to the Fund and for failure to comply with the mandatory IOLTA program; the attorney was also guilty of violations of RPC 1.15(d) and RPC 8.4(a)); In the Matter of Anthony J. Balliette, DRB 12-276 (December 11, 2012) (attorney practiced law in an estate matter while ineligible for failure

to pay the annual attorney assessment to the Fund; the attorney also was guilty of gross neglect and failure to promptly satisfy a lien against the estate, violations of RPC 1.3 and RPC 1.15(b); we considered, in mitigation, the attorney's previously unblemished twelve-year career and the serious personal and health issues that he was experiencing at the time of the misconduct); In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010) (attorney practiced law while ineligible for failure to file the IOLTA registration statement for three years; the attorney did not know that he was ineligible); and In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional).

Here, there is no evidence that respondent knew that he was ineligible at the time he represented Mayhue in New Jersey Superior Court. Therefore, an admonition would have been sufficient for that violation, standing alone.

Ordinarily, admonitions, too, are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (failure to cooperate with an ethics committee's attempts to obtain information about the attorney's representation of a client;

remaining charges were dismissed); In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the ethics committee's investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with ethics investigator's requests for information about the grievance; the attorney also violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, attorney ignored numerous letters from the ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources, including the probation department, the ex-wife's former lawyer, and the attorney's mortgage company); In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to

the ethics investigator's request for information about the grievance).

For both violations, thus, it is likely that respondent would have received no more than a reprimand and, possibly, even an admonition. See, e.g., In the Matter of Queen E. Payton, DRB 05-250 (November 3, 2005) (admonition for attorney who practiced law while ineligible between September 2003 and August 2004 and failed to cooperate with disciplinary authorities during the investigation of the matter).

But it is respondent's stunning, willful pattern of disregard for disciplinary authorities that propels this case in the direction of a suspension. Specifically, in the first of the two matters (DRB 13-039) that led to respondent's three-month suspension, on four occasions, between July 17 and October 19, 2012, the OAE asked respondent for an explanation of an overdraft that had occurred in his trust account and for a copy of his bank records. Respondent ignored all four requests. Even the OAE's notice to him that it was treating the matter as "misappropriation" and, later, as a "full-fledged ethics investigation" did not spur him into action. Subsequently, on October 19, 2012, when the OAE scheduled a demand audit of his attorney records, he did not appear on the scheduled date.

In the second matter (DRB 13-019) that culminated in the three-month suspension, although respondent filed a reply to the grievance, he failed to attach necessary documents to it. Despite the ethics investigator's three subsequent requests for the documents, respondent did not provide them. Perpetuating his pattern of ignoring disciplinary authorities' requests and even demands for information, respondent did not file answers to the two complaints that were consolidated for our review.

Even more egregiously, when the Supreme Court ordered respondent to show cause why he should not be disbarred or otherwise disciplined, he failed to appear. The Court order that suspended him for three months cited In re Kivler, 193 N.J. 332 (2008), for the proposition that a respondent's unexcused failure to comply with an order to show cause may be a basis for enhanced discipline. Indeed, the Court enhanced the discipline that we had determined to impose in those consolidated matters, a censure, to a three-month suspension. In re Savage, supra, 216 N.J. 406.

In the two consolidated matters currently before the Court (DRB 14-051 and 14-109), respondent did not comply with the district ethics committee's two separate requests for information about a client's grievance. In addition, he turned his back on the OAE's requests for a reply to another client's

grievance, a copy of that client's file, and his accounting records. On three occasions, between June 25 and November 18, 2013, the OAE asked respondent for the above documents, to no avail. The third occasion encompassed a demand audit, at which respondent, once again, did not appear. As in the three-month suspension matter, respondent did not file answers to the complaints, causing them to proceed on a default basis.

Finally, in this matter, twice the OAE asked respondent to supply a written reply to the grievance, copies of the client's file and the written fee agreement, and evidence of any payments from the client to him. Respondent disregarded the OAE's requests. He then chose not to answer the complaint.

The above chronology demonstrates that, again and again, respondent has spurned disciplinary authorities' requests for information. As we remarked in another case, "[t]his troubling pattern of misconduct reflects more than lack of cooperation. It shows a lack of respect for disciplinary personnel, agencies, and tribunals that rises to the level of defiance." In the Matter of Kenneth Paul Sirkin, DRB 11-413 (May 9, 2012) (slip op. at 25).¹

¹Although the attorney in Sirkin (a motion for reciprocal discipline) was disbarred, the disbarment was premised on the totality of his conduct in thirteen matters, including failure or refusal to account for or deliver trust funds, lack of
(footnote cont'd on next page)

What degree of discipline is, thus, appropriate for this respondent? As mentioned earlier, viewed in isolation, the present infractions (practicing law while ineligible and failing to cooperate with the OAE) would merit no more than a reprimand -- possibly even an admonition. In the aggregate, however, respondent's conduct is deserving of much stronger discipline - a term of suspension.

An attorney who was reciprocally disciplined in New Jersey for recordkeeping violations, negligent misappropriation of trust funds, improper release of escrow funds, and failure to cooperate with Florida disciplinary authorities received a six-month suspension. Except for a temporary suspension in Florida, the attorney had no ethics record. In re Armotrading, 193 N.J. 479 (2008). We determined that, but for Armotrading's non-cooperation with Florida disciplinary officials, the other ethics violations would have led to a censure in New Jersey. We

(footnote cont'd)
diligence, pattern of neglect, failure to communicate with clients, improper contingent fee, failure to comply with clients' instructions, failure to maintain required records, failure to make prompt disposition of funds, and failure to cooperate with disciplinary authorities (including failure to file an answer to the complaint). Id. at 19. Sirkin "also demonstrated an appalling lack of concern for his clients' well-being." Id. at 25. Sirkin's disciplinary record in Florida consisted of a ten-day suspension, an "emergent" suspension, and a three-year suspension. In New Jersey, Sirkin had received a censure and a three-month suspension. Both New Jersey matters were defaults. Id. at 18-19.

remarked, however, that Armotrading's failure to cooperate with the Florida disciplinary authorities "was so pervasive as to evidence a pattern of disregard for the ethics system." In the Matter of Gregory P. Armotrading, DRB 07-240 (December 5, 2007) (slip op. at 19-20).

Specifically, Armotrading failed to reply to the grievance; failed to answer the complaint; twice failed to comply with the auditor's request for documents; and failed to appear at one of two non-compliance hearings, which resulted in his temporary suspension. He also did not notify New Jersey disciplinary authorities of his Florida suspension, as required by the rules. Ibid. Largely because of Armotrading's pattern of non-cooperation, we determined that he should be suspended for six months. The Court agreed.

Respondent's pattern of non-cooperation with disciplinary authorities was more widespread than Armotrading's. When the two matters pending before the Court (DRB 14-051 and 14-109) and the present matter are combined, altogether respondent failed to cooperate with either the OAE or the district ethics committee on eight occasions, which included defaulting three times. Armotrading received a six-month suspension for five instances of failure to cooperate, including one default. Therefore, respondent should be suspended for one year for his pattern of


non-cooperation in the three combined matters. Because our determination in DRB 14-051 and DRB 14-109 was for a six-month suspension, we determine to append another six-month term to the final discipline imposed by the Court in those matters, to begin at the expiration of the first term, for a total of a one-year suspension for all three matters.

Member Gallipoli voted to recommend respondent's disbarment, believing that this respondent's total disdain for disciplinary authorities cannot be tolerated and must disqualify him from the practice of law.

Member Rivera did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven E. Savage
Docket No. DRB 14-338

Decided: February 3, 2015

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli	X					
Hoberman		X				
Rivera						X
Singer		X				
Zmirich		X				
Total:	1	6				1



Ellen A. Brodsky
Chief Counsel